IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 53 OF 1989

1. Vijaya Vishnu Deshpande & 4 ors. ... Appellants

V/s

1. The State of Maharashtra & 2 ors. ... Respondents

Mr. Shahen Pradhan holding for Shri N.V. Pradhan for the appellants.

Mrs. G.P. Mulekar, A.G.P. for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 30TH SEPT., 2004.

P.C.:

1. The appellant plaintiff has filed this appeal against the judgment and order passed by the Addl. District Judge, Solapur, dated 12.9.1988 dismissing the appeal and confirming the order passed by the Civil Judge, Sr. Divn., Solapur, dismissing his suit.

2. I have heard the learned counsel for both parties. Perused the entire record.

3. The appellant plaintiff filed the suit against the State of Maharashtra, the competent authority acting

under The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the said Act" for brevity). The dispute was in respect of the consolidated Block No. 303 Hissa No. 1/1 to 1/7. The property is situated within the limits of North Solapur Taluka.

The plaintiffs' case is that, the husband of the plaintiff No.1 and father of plaintiffs 2 to 5 were members of the joint family. Deceased Vishnu was the Karta of the joint family. The joint family possessed the landed property at Jambhulni, Tal. Atpadi, Dist. Sangli. It was Survey Nos. 167/1 and 168. These lands were the ancestral property and were sold on 14th March, 1966 for Rs.5000/-. After selling the above ancestral property, deceased Vishnu purchased the disputed property on 29th December, 1986 for Rs.4,200/-. Thus, it was alleged that the suit property was purchased from the nucleus of the joint family property and, therefore, plaintiffs had right, title and interest in the said property and they have undivided share in the suit property. Defendants 2 and 3 treated deceased Vishnu as sole owner and holder of the land in dispute. It is alleged by the plaintiffs that on 14th Sept., 1976, deceased Vishnu filed the statement under Sec. 6 of the said Act in respect of land Gat No. 303/1 situated at

Solapur and within the agglomeration of Solapur. In the said statement, deceased has referred to the parts of Survey No. 306 having allotted to the family members by partition dated 7th February, 1976. It was also pointed out that, in the said statement, 959 sq. mtrs. of the land was kept common for road and for convenient enjoyment of the land as per building regulations. The open land was only 1113 sq. mtrs. Thus, there was no question of deceased Vishnu holding any surplus land. In the statement, deceased Vishnu has referred all interested persons. However, the competent authority - defendant No.2, by his order dated 8th August, 1979 under Sec. 8(2) of the said Act, called upon deceased Vishnu to submit his objections, if any, within 30 days and the date of hearing was fixed on 15th Sept., 1979. In the said order, it was stated that built-up area is nil and vacant land was shown as 4846 sq. mtrs. Deceased Vishnu, under the said Act, was only entitled to 1500 sq. mtrs. Thus, excess area was to the extent of 3356 sq. mtrs. Therefore, this land was declared as excess land. Thereafter, the defendant No.2 issued a final statement only regarding 1500 sq. mtrs. and the land was declared as excess and accordingly the area was shown in the map as A, B, C & D. Deceased Vishnu then filed an appeal under Sec. 33 of the said Act to

defendant No.2 - the Collector of Solapur. Said appeal was decided on 7.7.1980 and was dismissed. It was Appeal No. 6 of 1980. Thus, defendant No.2 confirmed the order of the competent authority. The plaintiffs further alleged that they were in dark about the proceedings and they were not heard by the competent authority. When the plaintiffs came to know about the declaration of surplus land and dismissal of appeal filed by deceased Vishnu, they preferred the writ petition before the High Court being Writ Petition No. 4352 of 1983, however, it was summarily rejected. According to the plaintiffs, it was not disposed of on merits. Thus, plaintiffs contended that, when the plaintiffs had right, title and interest in the property, it was the duty of the competent authority to issue notice to the interested persons and they ought to have been heard before declaring the land as surplus. It is thus contended that defendants 2 and 3 did not follow the proper procedure and the proceedings and the decisions given by defendants 2 and 3 are not binding on the plaintiffs and, therefore, the suit came to be filed for declaration to that effect.

4. The defendants contested the suit and denied the allegations made by the plaintiffs. According to the

defendants they had followed proper procedure as laid down by the said Act and, therefore, the suit was liable to be dismissed.

On these pleadings, the Trial Judge framed issues and came to the conclusion that the Civil Court had no jurisdiction to entertain the present suit and in view of the provisions contemplated under Sec. 42 of the said Act, the said suit came to be dismissed.

The appeal preferred against the judgment and order of the Trial Court was heard on merits by the Additional District Judge, Solapur and order of the lower Court came to be confirmed and consequently the appeal was dismissed. Hence the present second appeal.

5. At the outset, it may be noted that, both the Courts below have come to the conclusion that the Civil Court has no jurisdiction to entertain the suit of the present nature under Sec. 42 of the Act and, as such, the suit was held not maintainable in law. In this regard, reference has to be made to the provisions of Sec. 42, which reads thus :-

"**Sec.42:- Act to override other laws:-**

The provisions of this Act shall have effect notwithstanding anything contained therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority."

Therefore, it is clear that Sec.42 declares that the provisions of this statute shall overirde any other law or any custom, usage or agreemnt or decree or order of a Court, tribunal and other authority. In the light of this section, pleadings of parties will have to be considered. At the time of admission of this appeal, the only so-called substantial question of law was raised to the effect whether the concerned authority under the said Act had adhered to mandatory proceedure laid under the said Act before passing the orders holding particular land in excess as per the Act. In this regard, it must be noted that from the evidence on record and the pleadings of the plaintiffs, it shows that plaintiffs 1 to 5 are legal heirs of deceased Vishnu. It is an admitted position that the deceased purchased the property land Gat No. 303/1. It is also an admitted

position that deceased died on 13.8.1983. There is also no dispute that the deceased filed the statement and the return before the competent authority at Solapur, which, after giving hearing to deceased Vishnu, decided the case and the plea taken by the deceased Vishnu before the competent authority that the property was an ancestral property and the plaintiffs had right in the property, came to be rejected. Deceased admitted before the competent authority that he was the sole owner of the property and accordingly draft statement was prepared and was served on the declarant. Deceased Vishnu then preferred an appeal before the Collector of Solapur. On hearing deceased Vishnu, the appellate authority confirmed the decision of the competent authority and the appeal came to be dismissed. Thereafter the declaration of surplus land was published in the Gazette. After the death of Vishnu, notices were served on plaintiffs. Thereafter they preferred writ petition in the High Court and challenged the order of the competent authority. The said writ petition was summarily rejected and therefore the plaintiffs' claimed that the order passed by defendants 2 and 3 are not binding upon them as they had no chance of hearing and notice was not issued to them.

The case now sought to be made out on behalf of the

plaintiffs is that deceased Vishnu was the Karta of the joint family. The joint family possessed the property i.e. agricultural lands in Sangli District and after selling the ancestral property, deceased Vishnu purchased the disputed property at Solapur in his name. The plaintiffs' therefore, contended that the property that was purchased at Solapur was purchased from the joint family funds. The plaintiffs being co-parceners, have undivided share in the suit property. The contention raised by the plaintiffs was also pleaded by deceased Vishnu before the competent authority and after considering the case of deceased Vishnu and that the property was joint family property, the competent authority under the Urban Land Ceiling Act came to the conclusion that it was self-acquired property of deceased Vishnu. It was also decided by the competent authority that the deceased also failed to prove that the said property purchased by him from the funds realized by the sale of agricultural lands which came to his share in the partition with his brother. The lands which were situated at Jambhulni, Dist. Sangli were sold on 14.3.1966 and the suit lands were purchased on 29th December, 1966. The deceased, before the competent authority, admitted that the suit property was his self-acquired property. The competent authority gave a

clear finding that the suit property was not the ancestral property. This finding was confirmed by the Collector. In the appeal, it was held that the suit property was self-acquired property. So, in view of the finding under the said Act and when it was positively decided that the suit property was self-acquired property of Vishnu, then certainly the plaintiffs cannot, by filing the present suit, allege that the order of the competent authority is not binding upon them. The documents produced on record also support the reasoning adopted by the lower appellate Court as he came to the conclusion that when once it was held that the property was self-acquired property of Vishnu, now the plaintiffs cannot change the case and this plea of the plaintiff is a bar under Sec. 42 of the Act. The Civil Court cannot take any cognizance of the case made out by the plaintiffs and to declare that the decision given by the competent authority is not binding upon the plaintiffs. In this regard, my attention was invited by the learned A.G.P. to the ruling of the Supreme Court in the case of **Government of A.P. v/s H.E.H. The Nizam, Hyderabad, reported in (1996) 3 SCC 282.** In para 8 of the said judgment, the Apex Court has laid down as to how the procedure under the provisions of the Act is to be adhered and if we peruse the same there could not be any

doubt that the competent authority had adhered to the proper procedure contemplated under the said Act and, therefore, the appellants cannot be allowed to raise the contention that before passing the final order the competent authority did not follow proper procedure as contemplated under the provisions of the Act. And, as such, there is no merit in this regard and appeal deserves to be dismissed.

6. Hence, in view of the reasons recorded above, I hold that the appeal deserves to be dismissed on merits and stands dismissed in limine with no order as to costs.

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